

EXHIBIT B

UNITED STATES DISTRICT COURT

DISTRICT OF PUERTO RICO

In Re:) Docket No. 3:17-BK-3283 (LTS)
)
) PROMESA Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
The Commonwealth of)
Puerto Rico and the)
Puerto Rico Electric)
Power Authority,) April 22, 2020
)
Debtors,)

In Re:) Docket No. 3:17-BK-3566 (LTS)
)
) PROMESA Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
Employees Retirement System)
of the Government of the)
Commonwealth of Puerto Rico,)
)
Debtor,)

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OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

ALL PARTIES APPEARING TELEPHONICALLY

For The Commonwealth
of Puerto Rico, et al.: Mr. Martin J. Bienenstock, PHV
Mr. Brian S. Rosen, PHV

For the Official
Committee of Unsecured
Creditors: Mr. Luc A. Despins, PHV
Mr. Shlomo Maza, PHV

For the Puerto Rico
Fiscal Agency and
Financial Advisory
Authority: Mr. Peter Friedman, PHV
Mr. Luis C. Marini Biaggi, Esq.
Mr. John Rapisardi, PHV

For Assured Guaranty
Corp. and Assured
Guaranty Municipal Corp: Mr. William J. Natbony, PHV
Mr. Casey J. Servais, PHV

For Ambac Assurance
Corporation: Ms. Atara Miller, PHV

For the Lawful
Constitutional
Debt Coalition: Mr. Susheel Kirpalani, PHV

1 APPEARANCES, Continued:

2 For the Official
3 Committee of Retired
4 Employees of the
Commonwealth of
Puerto Rico:

Mr. Robert Gordon, PHV

5 For AFSCME and AFT:

Mr. Kenneth Pasquale, PHV
Ms. Sherry Millman, PHV

6

For Employee Creditors: Ms. Ivonne Gonzalez Morales, Esq.

7

8 For the QTCB
Noteholder Group:

Mr. Sabin Willett, PHV

9 For the Special Claims
Committee and UBS
10 Financial:

Mr. Paul Lockwood, PHV
Mr. Roberto Quinones Rivera, Esq.
Mr. Harold Vicente, Esq.
Ms. Sunni P. Beville, PHV
Ms. Chelsea E. Mullarney, PHV

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San Juan, Puerto Rico

April 22, 2020

At or about 9:29 AM

* * *

THE COURT: Buenos dias. This is Judge Swain speaking.

MS. GONZALEZ MORALES: Good morning.

THE COURT: Good morning.

Ms. Tacoronte, would you announce the case, please?

COURTROOM DEPUTY: Absolutely, Your Honor.

In Re: The Financial Oversight and Management Board for Puerto Rico, as representative of the Commonwealth of Puerto Rico, et al., debtors, PROMESA Title III, case No. 2017-BK-3283 is now in session.

THE COURT: Again, good morning.

I'm sorry. Did someone say something? Hello?

All right. And so buenos dias and good morning.

Welcome counsel, parties in interest and members of the public and press. Today's Omnibus Hearing is occurring against the backdrop of circumstances that have no doubt been extremely challenging for everyone attending this telephonic hearing.

These are difficult times for the United States and for the world more generally, and our thoughts are with all of the people on the island and on the mainland who are affected directly and indirectly by the novel coronavirus pandemic.

1 And Puerto Rico continues to address challenges from the
2 recent earthquakes, hurricanes, and the ongoing financial
3 issues that bring us all together today. At the same time,
4 despite these trying circumstances, or perhaps because of
5 them, it is critical that, to the extent possible, progress
6 continues to be made as much as possible in these cases for
7 the benefit of Puerto Rico, the other Title III debtors, and
8 their many stakeholders.

9 To ensure the orderly operation of today's telephonic
10 hearing and a clear record of that hearing, all parties on the
11 line must mute their phones when they are not speaking. No
12 sound recording or retransmission of any aspect of the
13 proceeding is permitted.

14 I will be calling on each speaker during these
15 proceedings. When I do, please identify yourself by name for
16 clarity of the record. After the speakers listed on the
17 Agenda for each matter have spoken, I will provide an
18 opportunity for other parties in interest to address briefly
19 any issues raised during the course of the oral argument that
20 require further remarks. If you wish to be heard under these
21 circumstances, please state your name clearly at the
22 appropriate time. I will call on the speakers if more than
23 one person wishes to be heard.

24 Please don't interrupt each other or me during this
25 hearing. If we interrupt each other, it is difficult to

1 create an accurate transcript of the proceedings. Having said
2 that, I apologize in advance, because I will likely break this
3 rule. I will interrupt if I have questions or if you go
4 beyond your allotted time. However, if anyone has difficulty
5 hearing me or another participant, please say something
6 immediately.

7 The time allotments for each matter and the time
8 allocations for each speaker are set forth in the Agenda that
9 was filed by the Oversight Board on Monday, April 20th. That
10 Agenda was filed as docket entry No. 12899 in case 17-3283,
11 and it is available to the public at no cost on Prime Clerk
12 for those interested.

13 I encourage each speaker to keep track of his or her
14 own time. If there's anyone on a speaker phone or who hasn't
15 muted, please mute, because there's some interference. I'm
16 not sure where it's coming from. The Court will also be
17 keeping track of the time and will alert each speaker when
18 there are two minutes remaining with one buzz, and when time
19 is up, with two buzzes. And here is an example of the buzz
20 sound that you will hear.

21 (Sound played.)

22 THE COURT: If your allocation is two minutes or
23 less, you will just hear the final two buzzers.

24 If we need to take a break, I'll direct everyone to
25 disconnect and dial back in at a specified time. Again, I

1 remind everyone that consistent with court and judicial
2 conference policies and the Orders that have been issued, no
3 recording or retransmission of the hearing is permitted by any
4 person, including but not limited to the parties, members of
5 the public, or the press. Violations of this rule may be
6 punished with sanctions.

7 Our timetable for today is, for morning session, from
8 9:30 to 12:00 noon, and then to recommence at one o'clock and
9 go to five o'clock, if necessary.

10 Our first Agenda item is, as usual, status reports
11 from the Oversight Board and AAFAF. As I requested in the
12 Procedures Order, these reports have been made in writing, in
13 advance of this telephonic hearing, and are available on the
14 public docket.

15 Did someone just try to speak? Would you please mute
16 -- please mute your phones.

17 All right. The status reports have been made in
18 writing in advance of the hearing, and they're available on
19 the public docket. I thank the Oversight Board and AAFAF for
20 the care and detail reflected in the reports. I find them
21 comprehensive, and I have no questions for counsel about them.

22 Do any counsel who are -- well, first of all, do the
23 representatives of the Oversight Board wish to add anything to
24 the report at this time?

25 Mr. Bienenstock, is there anything in addition?

1 MR. BIENENSTOCK: In addition?

2 THE COURT: Mr. Bienenstock, do you wish to say
3 anything in addition?

4 MR. BIENENSTOCK: Nothing in addition.

5 THE COURT: Thank you.

6 Mr. Rapisardi or Mr. Friedman, did you wish to say
7 anything in addition?

8 MR. RAPISARDI: No, Your Honor. We have nothing to
9 add in addition to the comments by the Court.

10 THE COURT: And who is that speaking?

11 MR. RAPISARDI: I'm sorry. It's John Rapisardi.
12 Good morning.

13 THE COURT: Good morning. Thank you.

14 Do any other counsel who are on the line have any
15 questions or comments that they wish to make in connection
16 with the status reports? State your name clearly now if you
17 do, and then wait for me to call on you to speak.

18 (No response.)

19 THE COURT: All right. We will now move on to the
20 next Agenda item, which is the UCC's motion under Rule 3013 to
21 reclassify certain claims, Class 39A and Class 41, which was
22 joined by a number of other parties.

23 Before I hear arguments from the parties, I'd like to
24 make a few comments and give you a preview of what my current
25 thoughts are regarding the most appropriate path forward with

1 | respect to the Court's consideration of the motion and other
2 | related requests for relief, with the expectation that you
3 | might want to tailor your comments accordingly.

4 | The Court understands from the UCC's Reply Brief that
5 | the UCC is willing to have its motion heard in conjunction
6 | with the disclosure statement litigation. The Court had
7 | signaled an inclination to coordinate this motion practice
8 | with the disclosure statement proceedings when this motion was
9 | discussed at the March Omni; and the Court is inclined to deny
10 | the motion without prejudice at this time and cue up the
11 | motion and other related applications in connection with the
12 | anticipated disclosure statement hearing.

13 | The Court recognizes that there are a number of
14 | important and hotly disputed legal issues implicated by the
15 | motion, including the extent to which *Granada Wines* is
16 | controlling in this case. The Court also recognizes that both
17 | sides, generally speaking, there are two sides to this, have
18 | raised colorable arguments in support of their respective
19 | positions, and that, notwithstanding the relatively narrow
20 | relief sought by the UCC, a resolution on the merits of even
21 | the motion itself will likely have meaningful implications for
22 | the rights of many other parties in interest in these Title
23 | III cases.

24 | I also acknowledge the practical benefits associated
25 | with making a merits determination on the motion and other

1 related disputes concerning classification in the context of a
2 concrete plan proposal, but before the vote solicitation
3 process on the relevant plan commences, to the extent that
4 that's possible. Hence, my inclination to proceed in the
5 fashion that I have described.

6 And I look forward to hearing your reactions to these
7 comments, as well as any other argument that you feel
8 appropriate to offer at this time. And so now I will turn it
9 over to begin with Mr. Despins and/or Mr. Maza, who have been
10 allocated a total of 23 minutes.

11 MR. DESPINS: Good morning, Your Honor. Luc Despins
12 with Paul Hastings. I hope you can hear me clearly.

13 THE COURT: Yes, I can. Good morning, Mr. Despins.

14 MR. DESPINS: Good morning.

15 Obviously I've prepared a long presentation that
16 would cover 23 minutes, but your comments, you know, make a
17 lot of that not necessary. So I'm doing this on the fly,
18 because there are things that you raised at the end of your
19 comment that I need to understand.

20 But first, as we said in our Response, we are okay
21 with having this decided as part of the disclosure statement
22 hearing, but not later than that. And, therefore, if Your
23 Honor, you know, wants to -- obviously you control your
24 docket. And we think it would be okay to go forward today,
25 but if you -- if you feel more comfortable waiting for the

1 disclosure statement hearing, so that there's no possibility
2 that things change between now and then, we understand. And
3 that's why we said that in our Reply.

4 This being said, we have not heard anything from the
5 Oversight Board that indicates that this issue is going to go
6 away. But needless to say, you -- I mean, you've already
7 indicated your intention to rule, and therefore, I don't want
8 to spend -- waste a lot of the Court's time.

9 The part -- and I apologize for doing this, but the
10 part that I'm not sure I understood is that, at the end, you
11 said something about deciding this issue before the -- before
12 the voting process or -- and I'm sorry if the -- if you're --
13 the Court was indicating that you might defer this issue till
14 after this voting, then obviously we don't agree with that.
15 We think it's critical that it be decided before then, because
16 we're going to spend millions of dollars in that process. But
17 again, I was -- I may not have heard Your Honor's comments
18 clearly on that.

19 So other than that, Your Honor, I mean, I was ready
20 to address the merits of the motion and all that, but I would
21 say also, in terms of -- instead of denying the motion, why
22 is it not adjourned to the disclosure statement hearing, so
23 we don't have to refile it or anything of the sort? Because
24 the briefing is fairly complete. Unless the Board is going
25 to change the Plan in a way that affects this issue, we would

1 just say, you know, let's adjourn that to that hearing date
2 rather than denying the motion at this time.

3 So these would be my opening comments, Your Honor.

4 THE COURT: All right. I thank you for your brevity,
5 and I will respond to a couple of the issues that you raised.

6 When I said that I believe these issues are better
7 entertained in connection with the disclosure statement, and I
8 think I included a couple of hedging words like "it's
9 possible," "to the maximum extent possible, determined in
10 advance of voting," I was quite serious. I think that we need
11 to go into the disclosure statement and solicitation of votes,
12 assuming we get that far, with issues relating to proper
13 classification decided and those determinations reflected
14 appropriately in the solicitation materials.

15 There are arguments in the papers that have been
16 filed about 1122 issues and 1129 issues, and some
17 argumentation that some things may be premature even after the
18 disclosure statement stage. Those are issues that I'll have
19 to take up and hear and determine. I intend to do that in the
20 first instance in connection with the disclosure statement
21 hearing, but I can't say, not having heard everyone on the
22 merits and not having sought to determine the merits, I can't
23 promise you that I won't be persuaded that there's something
24 that, either for factual or legal reasons, needs to be left
25 open in some way, even going into the disclosure statement

1 hearing. So that was the reason for that bit of a hedge.

2 When I speak about deciding any issues without
3 prejudice to renewal, I take into account the possibility that
4 the Plan may be further amended as proposed, that may or may
5 not make changes that are material to some or all of the
6 issues that have been raised here.

7 There have also been a variety of issues put onto the
8 basic structure of the motion initiated by the UCC. I think
9 some unbundling of those issues may be appropriate when we
10 come back to them, by reason of changes in the Plan, by reason
11 of developments in the revenue bond litigation, and also,
12 frankly, for clarity. And so my intended denial of the motion
13 without prejudice is also intended to create an opportunity
14 for updated and more discrete packaging of the issues of
15 various constituencies in relation to the disclosure statement
16 litigation.

17 So I hope that helps to clarify that.

18 MR. DESPINS: Yes, Your Honor. Thank you very much.
19 It's very clear. Thank you.

20 THE COURT: Thank you.

21 And so I will now call on Ms. Miller for Ambac.

22 MS. MILLER: Good morning, Your Honor. Atara Miller
23 for Milbank on behalf of Ambac. We, like the UCC, have no
24 objection to Your Honor's proposed path forward. We think
25 that, as the Court seems to be inclined to do, that it's

1 critical to decide the issue in connection with the disclosure
2 statement and before voting.

3 With that, there are only two brief points that I'd
4 like to make. And one is that we still think that it's
5 critical that the Court consider and address, at the
6 preliminary stage, the Oversight Board's argument that the
7 Court simply doesn't have discretion to consider the
8 classification arguments raised under Rule 3013 because of
9 certain provisions under PROMESA. We think that if we're
10 going to move forward with a 3013 classification dispute in
11 connection with the disclosure statement, that there should be
12 clear guidance from the Court regarding the scope of its
13 authority. And I think that argument has been fully laid out
14 in the papers.

15 The second thing, and I think this is mooted,
16 although the Court didn't address it directly, so I'll just
17 make the argument that the Board seems to be requesting, in
18 its opposition papers, that the joinders of Ambac and Assured
19 be stricken. That's obviously not procedurally proper, but
20 it's also, in our view, without legal basis.

21 And so to the extent that it's going to be adjourned,
22 our view is that all of the relief sought should be denied,
23 and everybody can refile at the appropriate time. So unless
24 Your Honor has any questions, that's all we have to add.

25 THE COURT: And so you're saying that a denial

1 without prejudice works for you on that procedural bundling
2 issue?

3 MS. MILLER: Correct. Yeah. I think it would be
4 mooted in a second phase when everybody refiles, because
5 frankly, I think it's just a procedural issue. But -- so yes,
6 it would be fine with us.

7 THE COURT: Thank you.

8 Now let's turn to Assured. Mr. Natbony.

9 MR. NATBONY: Thank you, Your Honor. Bill Natbony.
10 I'll defer to Mr. Servais.

11 MR. SERVAIS: Thank you, Your Honor.

12 THE COURT: Hello, Mr. Servais.

13 MR. SERVAIS: Hello, Your Honor. This is Casey
14 Servais from Cadwalader on behalf of Assured.

15 Our position is essentially aligned with Ambac's
16 position. We do support deferring these issues until the
17 disclosure statement hearing. Obviously, we support the
18 relief requested in the Committee's motion, but we have
19 additional classification issues that go beyond those that
20 were the focus of the Committee's motion. And we believe it
21 would be efficient if all of those different classification
22 issues could be addressed at the same time in connection with
23 the disclosure statement hearing.

24 So we are fully on board with Your Honor's procedural
25 proposal this morning.

1 THE COURT: Thank you, Mr. Servais.

2 Mr. Natbony, did you want to add anything or is that
3 it for Assured?

4 MR. NATBONY: That's it, Your Honor. Thank you for
5 your time.

6 THE COURT: Thank you.

7 And Ms. Gonzalez Morales for the Employee Creditors.

8 MS. GONZALEZ MORALES: Yes, Your Honor. Good
9 morning.

10 THE COURT: Good morning. Did you wish to make any
11 remarks?

12 MS. GONZALEZ MORALES: At this time, no, Your Honor.

13 THE COURT: Okay. Thank you.

14 I'll turn then now to the Oversight Board.
15 Mr. Bienenstock.

16 Mr. Bienenstock, are you there?

17 MR. BIENENSTOCK: Your Honor? Can you hear me, Your
18 Honor?

19 THE COURT: I can hear you now, yes.

20 MR. BIENENSTOCK: Okay. Thank you.

21 A few things. First, on behalf of the Board, its
22 advisors, Proskauer and myself, we wanted to wish the Court,
23 its staff, all the people in Puerto Rico, all of the creditors
24 and their advisors here today good health and hopefully a
25 speedy return to when we can all be together.

1 In respect of today's argument and Your Honor's
2 preliminary comments, I -- our response is a little more
3 comprehensive than what you've heard so far for reasons I will
4 explain. We clearly agree that the motion should not be
5 determined today. And pushing it to the disclosure statement
6 hearing, or thereabouts, is definitely something we can
7 support, but in part. And I want to explain why.

8 As Your Honor knows, the UCC, as well as the partial
9 joinders, have made a number of contentions in support of
10 their request that the Court find the existing classification
11 as unconfirmable under Section 1122. Some of the reasons, for
12 instance, that they have each urged are gerrymandering. The
13 Court will not know, at the disclosure statement stage,
14 whether there's any legs behind gerrymandering, because the
15 Court won't know if there are other unimpaired accepting
16 classes that would make acceptance of the Retiree class
17 irrelevant insofar as Bankruptcy Code Section 1129(a)(10)
18 goes. You know, the provision requiring at least one impaired
19 accepting class.

20 Second, no one knows, maybe the Court knows, but
21 maybe not, how the Court will ultimately reason through and
22 determine this issue. One of the many possibilities, which
23 the Oversight Board believes would be the correct one, is that
24 the Board will -- the Court will determine that separate
25 classification of unsecured claims, as long as it's not for

1 the purpose of gerrymandering, is okay.

2 And it's especially okay if there's a -- what we say
3 is a governmental justification, as opposed to in Chapter 11
4 cases, a business justification, because, as the Court knows,
5 this Court and the First Circuit have both observed several
6 times now that Title III cases are to make sure the territory
7 survives and is sustainable, and it's not exactly the same as
8 a Chapter 11 case, where maximization of profit or return has
9 a primary place.

10 So if, in fact -- I mean, we will be urging, whenever
11 this issue is heard, that there is ample governmental
12 justification, and we would want to prove that, which is one
13 of the primary reasons why our pleading explained that this
14 should really be taken -- this is a confirmation objection.
15 It should be taken up in connection with our confirmation when
16 the Court will have access to all of the evidence.

17 Now, we're totally sympathetic and understand the
18 notion that why go forward with the expense and time of voting
19 if the Court's going to determine the classification is wrong,
20 because that would be a waste. I would say, though, that if
21 the Court looks at the Committee's proposed order on its 3013
22 motion, while in paragraph two of its proposed order it asks
23 the Court to require the classification together of classes
24 39A and 41, in paragraph four of its proposed order, it says,
25 "This is without prejudice to the Committee deciding that

1 | there are other classification issues in the Plan that it can
2 | take up whenever."

3 | And so this notion of doing something for the
4 | efficiency, both of the judicial efficiency and parties'
5 | efficiency, it's eventually diluted, if not totally lost, by
6 | the Committee's position.

7 | We also urged in our pleading something very similar
8 | to what I just said, which is that there's no such thing, as
9 | we read 3013, as the Court taking two classes, when the Plan
10 | has around 40 or 41 or so classes, and saying these two should
11 | be together. Well, how can the Court know that without
12 | knowing what kinds of claims are in each of the other classes?

13 | And so the point that we believe this leads to is
14 | that whenever this is taken up, whether it's at confirmation
15 | or at the disclosure statement stage, it needs to be
16 | comprehensive if it's going to have meaning. All of the
17 | classifications of all the 40 or so classes need to be on the
18 | table, understood, and -- so the Court can rule on
19 | classification once and for all, and not subject to being
20 | second-guessed later by other classification objections that
21 | the Committee's proposed order proposes to reserve to itself.

22 | Now, shifting issues a bit, Your Honor, we -- you
23 | know, the Board has been accused by some of the movants and
24 | partial movants, that we want to do everything to put off the
25 | resolution on the merits, because, you know, we're worried

1 | about it; but we think it's close to confirmation; we have a
2 | better chance of success or some such thing. I just want to
3 | say, as the Court would assume we would say, that is totally
4 | wrong from the Oversight Board's point of view.

5 | And frankly, if not for some of the issues I just
6 | mentioned, that the Court needs to know if there are other
7 | accepting classes, the Court needs to know what governmental
8 | justifications are, we would love to have this issue decided,
9 | for some of the same reasons as everyone else wants it
10 | decided, so we don't go forward on a Plan that can't be
11 | confirmed because of classification. And we'd love to get
12 | this out of the way.

13 | Now, on that point, I want to make the following
14 | observation that pulls together some of the arguments made by
15 | the Oversight Board, the Retiree Committee, and others
16 | supporting us, but pulls it together in a way that I think
17 | didn't happen in the briefing, simply because everyone's been
18 | making different arguments and thinking has evolved, et
19 | cetera, and that's this point, that is so obvious, we didn't
20 | say it as obviously as it is. In the Retiree class, putting
21 | aside how much we pay them to try to get them to the poverty
22 | level -- that's not relevant for the point I'm about to make,
23 | but in the retiree class, the treatment is to give each
24 | retiree payments monthly for the duration of their lives, and
25 | sometimes, depending on the law, or the contract, or the

1 statute, their spouse's life. And as the Court knows, under
2 Bankruptcy Code Section 1123(a)(4), everyone in the class
3 needs to have the same treatment, unless someone volunteers
4 for a lesser treatment.

5 So here's the issue. If we take a commercial claim,
6 whether it's Ambac's claim, a bondholders' claim, anyone's
7 claim, and put it into the retiree class, the question is:
8 For the duration of whose life should Ambac or a bondholder or
9 anyone else get a series of payments?

10 Now, obviously that's crazy. Commercial claims
11 aren't treated like that. So the notion that commercial
12 claims need to be classified with pension claims is something
13 that, Your Honor, I don't think -- to my knowledge, it has
14 never happened in any Chapter 11 case. You can consult all
15 the airline cases that have huge pension plans. It's never
16 occurred in a Chapter 9 case.

17 No one would dream of treating a commercial claim the
18 way we're treating a pension claim; and in the reverse, no one
19 would dream of saying to the retirees, you're not going to get
20 monthly payments for the rest of your life; we're going to
21 give you a flat amount; and in the case of half of you, it
22 will last the rest of your life or longer; and in the case of
23 the other half of you, it won't. That can't ever happen. No
24 one's ever tried that, and no one ever would.

25 And, you know, if -- I don't know if, given the

1 direction of this, the hearing on this matter, either the UCC
2 or some of the other partial movants want to respond, but I'd
3 love to hear anyone give the Court -- explain to the Court how
4 the two commercial claims and retiree claims could ever be
5 combined in the same class with the same treatment, and
6 whether they've ever seen it before, including in the First
7 Circuit. We haven't. We can't imagine that that could ever
8 happen.

9 Now, on that basis alone, we frankly think the motion
10 could and has to be denied, whether that's today or at the
11 disclosure statement hearing, or at the confirmation hearing.
12 But the other point that that analysis demonstrates, we
13 believe, is that, as we said in our pleadings, although they
14 couch it as a 3013 motion, it's really unfair discrimination.

15 And not only is that our conclusion, but the Court
16 can look at some of the pleadings that the UCC and Ambac and
17 Assured filed, and they're asked -- for instance, the UCC
18 motion at paragraph 25 at page 11 says -- they ask that the
19 Class 41 general unsecured claims receive the same percentage
20 on their claims as the Oversight Board will pay the general
21 unsecured claims in Class 39A.

22 They worded that as they want equal treatment, not
23 that they should be in the same class, possibly because they
24 realize what I explained earlier. You cannot put commercial
25 claims in the same class as retiree pension claims. It just

1 | doesn't work, and it makes no sense.

2 | So I guess enough said. I've made the point. But
3 | I'm making it now because I just want the Court to know that
4 | at least from the Oversight Board's point of view, on that
5 | basis, this motion can and should be decided any time. If the
6 | Court is going to go into further classification and go
7 | through all the classes and ask for justifications, then
8 | whenever that happens, whether at the disclosure statement
9 | hearing or at confirmation, I want to -- I'll tell the Court
10 | now that, you know, we will be asking to be able to make a
11 | full record of the governmental justifications and all other
12 | reasons why we think the separate classifications are
13 | warranted and legal.

14 | I obviously, as Mr. Despins had prepared, had a lot
15 | of other remarks prepared. We were -- I was going to rebut
16 | the way the movants and partial movants purported to
17 | distinguish the cases we cited. We think they were clearly
18 | wrong, but we know the Court reviews the cases. And given the
19 | direction of this hearing on this matter, I won't take the
20 | Court and everyone else's time.

21 | But suffice it to say, we submit that they have
22 | misrepresented the cases that we've cited, showing that even
23 | in the District of Puerto Rico, the rule they say applies has
24 | not been applied; and, frankly, I think -- we think the First
25 | Circuit would be shocked if anyone ever told it that, based on

1 | its observations in *Granada Wines*, that retiree claims have to
2 | be classified with commercial claims, you know.

3 | In that case, that was a claim for withdrawing from a
4 | pension plan. It wasn't retirees in the plan --

5 | THE COURT: Mr. Bienenstock.

6 | MR. BIENENSTOCK: Yes.

7 | THE COURT: Mr. Bienenstock, I'm interrupting you. I
8 | do thank you for streamlining your remarks, and your
9 | confidence that I have read the papers, and that we have been
10 | studying the cases, and the parties' arguments in relation to
11 | the cases is well-founded. I do intend not to engage the
12 | merits today, but instead, to visit them on more briefing
13 | focused on the plan disclosure statement proposal with which
14 | you intend to go forward when that schedule is reset.

15 | I do thank you for the remarks that were substantive
16 | that you made insofar as I think that that may help with the
17 | focus of the reformulation of the parties' arguments for the
18 | presentation of the parties' arguments in connection with the
19 | disclosure statement hearing. You provided a bit more context
20 | of the Oversight Board's thinking that, as you say, was not
21 | quite as explicit or as patent in the written submissions.

22 | MR. BIENENSTOCK: Thank you, Your Honor.

23 | Unless the Court had other questions of me, I think
24 | those are all the remarks appropriate, again, given the
25 | direction of this hearing. So thank you.

1 THE COURT: Thank you, Mr. Bienenstock. And thank
2 you for your good wishes for all, which are also ones that the
3 Court extends, too.

4 Now let's turn to the Retirees Committee.
5 Mr. Gordon.

6 MR. GORDON: Yes. Good morning, Your Honor. Robert
7 Gordon of Jenner & Block on behalf of the Official Retirees
8 Committee.

9 Your Honor, I --

10 THE COURT: Good morning.

11 MR. GORDON: Good morning.

12 Your Honor, I'll be brief. I wholly concur in the
13 comments of Mr. Bienenstock. We do not have any objection to
14 adjourning, if you will, these issues, at least until the
15 disclosure statement hearing stage, with the caveat that I
16 would like to be able -- we would like to be able to still
17 argue at that point that it still is premature for all the
18 reasons that Mr. Bienenstock pointed out.

19 I think that the problem in this particular case is
20 it's virtually impossible to separate out the classification
21 issues from the -- what I'll call the business justifications
22 for separate classification. Mr. Bienenstock refers to them
23 as governmental justifications. And those justifications
24 require all sorts of evidence to be put on as to the thinking
25 of the Oversight Board, as the Plan proponent, and that,

1 generally speaking, is not appropriate at the disclosure
2 statement stage.

3 So the Court will be left in a situation where it is
4 trying to determine in a vacuum whether separate
5 classification is appropriate without knowing the business
6 justifications, and that smacks to me of being advisory. The
7 only basis I could see for a ruling on the narrow issue of
8 whether retiree claims could be separate from all the others
9 is the one that Mr. Bienenstock has very succinctly and
10 eloquently laid out regarding the difference in payment.

11 So, Your Honor, with that, again, we would agree to
12 an adjournment, reserving the right to argue that this -- all
13 of this can only really be addressed in conjunction with the
14 unfair discrimination issues as a practical matter at the
15 confirmation stage. Thank you.

16 THE COURT: Thank you, Mr. Gordon.

17 And now Mr. Willett, for the QTCB Debtholder Group.

18 MR. WILLETT: Good morning, Your Honor. Sabin
19 Willett of Morgan Lewis for the QTCB Group.

20 In light of Your Honor's --

21 THE COURT: Good morning.

22 MR. WILLETT: In light of Your Honor's colloquy with
23 counsel, I really have only one observation to make. Exhibit
24 A to the Assured Reply includes PROMESA's legislative history.
25 At page 45, commenting on Section 201, the Committee notes

1 provide that retiree claims are not to be unduly favored.

2 It's worth chewing on that. They can be favored,
3 just not unduly favored. And if they can be favored, not only
4 can they be separately classified, it seems they have to be,
5 and not simply for the important reasons that Mr. Bienenstock
6 laid out. What would be in need in Puerto Rico -- I would
7 expect you would need evidence, economists, labor experts, the
8 retirees themselves. In other words, a confirmation rather
9 than a disclosure statement issue.

10 Your Honor, when Senate hearings dragged on, Harry
11 Reid used to comment that while everything necessary had been
12 said, not everyone had yet had a chance to say it. In lieu of
13 the Court's comments, if I were to carry on, I'd soon earn
14 that description, so I'll stop here unless Your Honor has
15 questions.

16 THE COURT: Thank you, Mr. Willett.

17 Now, for AFSCME and AFT, Mr. Pasquale or Ms. Millman.
18 I have you down for two minutes, but everybody's been brief.

19 MR. PASQUALE: Yes, Your Honor. This is Ken Pasquale
20 from Stroock & Stroock & Lavan for AFT and its local at MPR,
21 and AFSCME and its local, SPU.

22 Your Honor, in light of your comments, we will not
23 burden the record and just reserve for when this is taken up
24 by the Court. Thank you.

25 THE COURT: Thank you.

1 And so I turn to Mr. Kirpalani for the LCDC.

2 MR. KIRPALANI: Hey. Good morning, Your Honor. It's
3 Susheel Kirpalani from Quinn Emmanuel representing the Lawful
4 Constitutional Debt Coalition.

5 You know, thank you, Martin, for your comments about
6 how important it is in this time for us to focus on positives
7 and hopefully one day getting back together. And thank you,
8 Judge, and to your staff, for accommodating such an enormous
9 number of parties in such an efficient way.

10 I also will -- I guess I'll hold my comments on the
11 merits to when this motion is cued up again. I will say that
12 I am surprised that Your Honor thinks that the disclosure
13 statement might be the right time to consider classification.
14 It certainly is not a requirement to do that. And in a case
15 like this, which is much more complicated than any of the
16 cases cited by the joinder parties for when classification
17 should be considered outside of a confirmation, it really does
18 seem to me that the mediator's recommendations to consider
19 classification as one of the many confirmation requirements
20 seems the better course.

21 It isn't as though the Committee or the monoline
22 groups are saying that if the Oversight Board and the Plan
23 proponents prevail on classification, then they have no
24 objection. So they really just want more bites at the apple,
25 and that is, you know, frankly, not good cause to have these

1 confirmation-related litigation issues heard prior to
2 confirmation, which is what the Court previously Ordered.

3 Good cause is not simply, I believe I'm right. Good
4 cause has to be that it actually serves some purpose. And it
5 can't be the purpose that, well, if I were to win because my
6 arguments are so good, then we can go back to the drawing
7 board. Frankly, as the out-of-the-money stakeholders, the
8 Unsecured Creditors, you know, really are trying to tell the
9 Oversight Board and the senior most creditors, which are our
10 clients, how to spend their money. And whether or not this
11 would be better done prior to embarking on a confirmation plan
12 -- respectfully, it is our risk, and if the Committee is
13 right, that classification was wrong, it was our money that
14 will have been spent in vain.

15 And we're willing to take that risk, because we
16 believe that the classification team is proper and we believe
17 we will prevail at confirmation. And resolving this piece
18 meal is not going to expedite the case. Obviously we'll
19 reserve more argument for when we get there, but I just wanted
20 to give you those comments, Your Honor.

21 THE COURT: Thank you for the preview. Thank you,
22 Mr. Kirpalani.

23 So now it is time for any remarks in response or
24 rebuttal, and I'll turn again to the UCC.

25 MR. DESPINS: Yes, Your Honor. I'm not going to

1 engage Mr. Bienenstock on his points. We've thought about
2 all these issues, and we have appropriate responses. I would
3 just point out that 1122 is not solely based on
4 gerrymandering. And in any event, their argument is that
5 there's no gerrymandering because the bondholder class will
6 accept the Plan.

7 And, of course, you know, there's an issue -- that's
8 why we have this paragraph in our Order that says we reserve
9 our rights to argue that there's also other improper
10 classification. And of course that goes to the issue of the
11 bondholders, because we believe that bondholders are just mere
12 unsecured creditors just like us. And that's why I welcome
13 Mr. Bienenstock's promise to have a full-blown classification
14 hearing, because that's the only way to do it.

15 And when I hear that we're spending their money,
16 that's really -- you know, it really -- the people of Puerto
17 Rico should not be put through a whole voting solicitation
18 process for something that may be dead on arrival. And that's
19 why this issue should be decided before there's a solicitation
20 process. It's not dependent on the results of that process,
21 and the legal issues are not dependent on that.

22 And that leads me to my final comment, Your Honor, in
23 the representation, which is it makes sense. I heard Your
24 Honor that if there's movement on the Plan -- that we should
25 wait to see if there is such movement, but this issue should

1 | be teed up, I would say, a few weeks or maybe a month before
2 | the disclosure statement hearing, because it's going to be a
3 | beast to deal with, aside from all the other disclosure
4 | statement hearing issues.

5 | So we don't know when that is, or we don't know the
6 | future. We don't know when the Board will say, we're going
7 | forward with this plan, or we're going forward with a
8 | different plan. But in any event, it just would make a lot of
9 | sense to have this issue not be premature, but certainly in
10 | conjunction, or at the same time as the disclosure statement
11 | hearing. But we believe these should be two separate
12 | hearings, because again, why go through the whole disclosure
13 | statement brain damage if this issue doesn't go the way the
14 | Oversight Board wants it to go.

15 | So that would be our last recommendation. You don't
16 | need to decide that issue now, but we would urge the Court, in
17 | scheduling this, to consider having this before the disclosure
18 | statement hearing, not by months, but by a certain amount of
19 | time, so that the parties don't have to spend a lot of time on
20 | the disclosure statement when the disclosure statement hearing
21 | may not go forward.

22 | So that would be our suggestion, Your Honor. Thank
23 | you.

24 | THE COURT: Thank you.

25 | Ms. Miller, anything further for Ambac?

1 MS. MILLER: Your Honor, in light of your comments,
2 we're not going to respond. The only thing I would like to do
3 is correct what I think may have been a misimpression created
4 by counsel for the QTCB holders when citing to the Committee
5 notes on page 45, which was reference to Section 201. And the
6 discussion there of the Plan, and the treatment of retirees
7 under the Plan, was under the Fiscal Plan and was not at all
8 talking about plans of adjustment or classification
9 thereunder.

10 So with that, we have nothing further to add.

11 THE COURT: Thank you.

12 And anything further for Assured?

13 MR. SERVAIS: This is Casey Servais from Cadwalader.

14 Just briefly on the timing points, we do want to
15 raise the concern that a primary reason that the objectors may
16 be attempting to push these issues to the confirmation hearing
17 is because they would like to be in a position to argue that
18 confirmation of a plan has mooted our classification
19 challenges. And that obviously would be prejudicial to the
20 movants, who should be able to appeal this issue prior to
21 confirmation of the Plan, and that would be facilitated by
22 hearing the classification issues earlier, either at the
23 disclosure statement hearing or even slightly prior thereto as
24 proposed by Mr. Despins.

25 With respect to specifically Mr. Bienenstock's

1 argument that gerrymandering cannot be decided until the
2 confirmation hearing, we cited numerous precedents to the
3 contrary in our Reply Brief. And what's important to
4 understand here is that with respect to gerrymandering, the
5 burden is actually on the Plan proponents to establish a
6 legitimate nongerrymandering purpose for each classification
7 decision in the Plan, not just with respect to a single class
8 like Class 39A.

9 We've obviously suggested that there are other
10 classifications on which they're hoping to rely for an
11 impaired accepting class, such as specifically the
12 classification of the GO bonds, that those other
13 classifications are also invalid, so they can't rely on those
14 other invalid classifications to defeat our gerrymandering
15 challenge. They need to, as a matter of law, establish a
16 legitimate, nongerrymandering purpose for each classification
17 in the Plan. And that should all be done in a comprehensive
18 manner.

19 With respect to the idea that there is a business
20 justification for a separate classification, we defeated that
21 as well in our Reply. If you look at footnote six, as a
22 matter of law, business justification is not a valid basis for
23 separate classification in the First Circuit.

24 So that's not something that's going to be a complex,
25 factual issue at confirmation, as Mr. Gordon suggested. That

1 is not a valid basis, as a matter of law, and can easily be
2 decided at the disclosure statement stage, or even before, as
3 Mr. Despins suggested.

4 So I just wanted to -- and one further point.
5 Mr. Bienenstock also again suggested that treatment, the
6 separate treatment proposed for the retiree claims was a basis
7 for separate classification. That's also thoroughly refuted
8 in our Reply where we show that treatment is not, in fact --
9 proposed treatment is not a basis for separate classification.

10 So I just wanted to not let those substantive points
11 go past and provide a response to them; but I do agree that
12 they should be addressed more fully in a comprehensive manner
13 with all of the related classification issues, either at the
14 disclosure statement hearing or slightly before.

15 Thank you.

16 THE COURT: Thank you.

17 Did anyone else wish to be heard on these matters or
18 heard again? If so, state your name clearly again.

19 MS. GONZALEZ MORALES: Yes, Your Honor. My name is
20 Ivonne Gonzalez. I represent a group of creditors called Wage
21 Claims Accrued During the Course of Employment.

22 THE COURT: Yes, Ms. Gonzalez.

23 MS. GONZALEZ MORALES: Can I address the Court? Yes.
24 What we have to say here --

25 THE COURT: Yes, you may.

1 MS. GONZALEZ MORALES: Uh-huh -- is that we seek the
2 Honorable Court to Order the cert to be classified together,
3 claims arising under the ordinary course of employment
4 matters, included arbitrarily in Class 41, with Class 40
5 claims.

6 And specifically, the group I represent asserts that
7 evaluation rests in that the amended plan, with a reasonable
8 basis, provides wage claims priority treatment and full
9 satisfaction and recovery for Class 40, an amount resulting
10 from the disposition of prepetition action brought pursuant to
11 the grievances and arbitration procedures, and by the other
12 hand, includes in Class 41, the wage claims presented by the
13 group of creditors, and thus treating their claims as if they
14 were equivalent to general unsecured claims with limited
15 recovery.

16 We sustain that the objected classification unfairly
17 discriminates against the dissenting group of creditors due to
18 the fact that the nature of the claims held in both groups of
19 employees are of equal rank since emerged from contractual
20 obligations created by a statutory framework that regulates
21 the public employment.

22 In view of the above, the amended plan also realized
23 the equal implementation of the law as to the employees. For
24 that reason, we pray to this Honorable Court to order debtors
25 to classify together the claims arising under the ordinary

1 course of employment matters included in the Class 41 with
2 Class 40 claims.

3 We thank the Honorable Court for the opportunity to
4 address this issue today.

5 THE COURT: Thank you, Ms. Gonzalez.

6 And so I have listened carefully to -- yes. Who else
7 would like to speak?

8 MR. BIENENSTOCK: This is Martin Bienenstock of
9 Proskauer Rose, LLP, for the Oversight Board. I just wanted
10 to make one additional, or two additional very brief comments,
11 if that's okay.

12 THE COURT: Yes, Mr. Bienenstock.

13 MR. BIENENSTOCK: Thank you.

14 I alerted the Court earlier to at least the need that
15 we perceive to be able to prove governmental justification,
16 lack of gerrymandering intent, et cetera, at whatever hearing
17 we have on classification. I didn't mention another set of
18 evidence that would be necessary, and I raise it now simply
19 for the Court's ability to plan time. Although some of the
20 movants and partial movants have accused us, the Oversight
21 Board, of gerrymandering all of the different bondholder
22 classes, in fact, those separate classifications represent
23 settlements of different challenges to each of those issues of
24 bonds.

25 The Court and everyone here knows that the Board's

1 Special Claims Committee has filed actions challenging the
2 validity of many different series of the GO bonds, and in
3 very large part, the separate classification of bondholders
4 into different classes reflects different settlements of the
5 challenges to those bonds, as well as to their asserted
6 priority. That overlaps all of them, and I raise this just
7 to alert the Court that if we're going to have a claim -- a
8 separate hearing on classification to justify all those
9 separate classes, we would obviously need to show that --
10 what's being settled, and that the settlements can be
11 approved. That's not a short hearing, but it's integral to
12 why the classification is the way it is.

13 And finally, I won't take the time to respond to
14 Assured's argument that treatment doesn't matter. I'll simply
15 say that all of that argument assumes that *Granada Wines'*
16 observations about classification was a holding and it's
17 binding in this situation. We think that is the furthest
18 thing from the truth, but that obviously is going to be for
19 another day.

20 But thank you for the additional time, Your Honor.

21 THE COURT: Thank you.

22 Did anyone else wish to speak?

23 (No response.)

24 THE COURT: All right. Then I will continue here. I
25 do appreciate very much all of these remarks and all of the

1 | submissions. I remain persuaded that taking these issues up
2 | again in conjunction and in coordination with a schedule that
3 | is leading into a determination on the disclosure statement
4 | and that is part of a continuum toward confirmation is
5 | appropriate, and more appropriate than taking them up now.

6 | I have heard the remarks and concerns today about the
7 | potential for determinations on these issues that have been
8 | characterized and cued up for the most part as classification
9 | issues, being potentially a lengthy and complicated trial
10 | turning on factual determinations as to the justification for
11 | various classifications.

12 | My intention is to take up, at the disclosure
13 | statement stage, the classification arguments, or the
14 | arguments that have been made here that -- I will use the word
15 | structural arguments that, as a matter of law, this can't be
16 | done, no matter how good, sincere, and economically rational
17 | the justification offered for a particular classification is.
18 | And in its most blunt form, it's the argument that *Granada*
19 | *Wines* would require -- would permit only two or three classes
20 | here, and it would all be driven by the source of the payment
21 | and whether there's security.

22 | If that argument is correct, the proponents of that
23 | argument say you can't separate -- well, the original
24 | proponents of that argument, the UCC, and the retire -- and
25 | the joining parties say you can't classify together unsecured

1 | creditors and retirees who -- I'm sorry. You can't classify
2 | separately unsecured creditors and retirees who are being
3 | treated separately. You simply cannot do that in the First
4 | Circuit, and therefore, there's no point in soliciting votes
5 | on a plan that would propose to do that.

6 | I wish to focus on issues of law like that, and
7 | have -- if that argument is not one that the Court finds
8 | persuasive, my expectation is to -- so if I don't find
9 | persuasive that there is no room in this particular landscape
10 | for a structure such as the one that is proposed here, I would
11 | anticipate leaving for confirmation the question of whether,
12 | if the structure is -- is feasible as a matter of law, is
13 | acceptable as a matter of law, assuming that the factual case
14 | is made for each of these different classes and buckets, those
15 | factual determinations would be part of the confirmation
16 | process as opposed to the disclosure statement process.

17 | So I am denying without prejudice the motion, as
18 | joined, here on the record. It is without prejudice to
19 | raising these issues in a manner consistent with the
20 | litigation schedule that will be reestablished for contested
21 | matters in connection with the hearing regarding the adequacy
22 | of the disclosure statement for the currently proposed Amended
23 | Plan or a further amended Plan.

24 | The UCC may reassert any or all of the arguments made
25 | in its motion, as well as any further arguments, if they're

1 germane to those arguments. And to the extent any additional
2 parties in interest have classification related arguments,
3 arguments related to the confirmability of the relevant plan
4 that are, again, structural ones, or other pertinent
5 arguments, including arguments as to whether the issues raised
6 by the UCC should be evaluated in the context of Section 1129,
7 rather than under 1122, those should be raised in appropriate
8 papers directed to the proposed disclosure statement at that
9 time.

10 Any different constituencies who have concerns with
11 respect to particular elements of the classification should
12 target their own structure and address their issues in their
13 own separate pleadings.

14 What I would ask is that when the Oversight Board
15 proposes to restart the schedule, proposes to have the Court
16 set a schedule, that the parties meet and confer and focus not
17 only on the overall schedule, but on whether it is necessary
18 or appropriate to have a process that focuses separately on
19 these classification issues in advance of, or otherwise
20 separately from, the general disclosure statement hearing.

21 Again, my expectation and my goal is to deal with
22 these issues at the disclosure statement hearing on a legal
23 rather than factual basis, so that if I were to determine
24 that, under the law of the First Circuit, it is possible in
25 certain circumstances for a multi-class structure that deals

1 differently with different unsecured claims to be confirmed,
2 then I would be looking into the question of whether the
3 disclosure of the aspects of the Plan is adequate and meets
4 the other requirements at the disclosure statement stage. And
5 I would leave -- expect to leave factual attacks on the
6 fairness of the classifications or other propriety issues as
7 to the classifications for confirmation.

8 And so keep that in mind when you meet and confer and
9 develop the proposals that I'm sure we'll then discuss at a
10 hearing, and we'll work out the precise schedule from there.

11 Are there any further comments or questions regarding
12 the 3013 motion?

13 (No response.)

14 THE COURT: Okay. Thank you.

15 So we will go on to the next Agenda item, which is
16 the renewed motion for relief from the automatic stay by UBS,
17 and that is docket entry No. 12561 in case 17-3283. And we
18 will start with counsel for UBS Financial.

19 I have 15 minutes allocated for Messrs. Lockwood
20 and/or Quinones Rivera.

21 MR. LOCKWOOD: Good morning, Your Honor. This is
22 Paul Lockwood from Skadden Arps for UBS Financial Services of
23 Puerto Rico. And I will be primarily making the argument,
24 Your Honor.

25 THE COURT: Good morning, Mr. Lockwood.

1 MR. LOCKWOOD: Good morning. You can hear me, I take
2 it.

3 THE COURT: Yes, I can.

4 MR. LOCKWOOD: I'll primarily be making the argument,
5 and Mr. Quinones can, if necessary, address any issues of
6 Puerto Rico procedure or Puerto Rico law that may come up,
7 although the argument is going to be focused on federal law,
8 so I don't think that will be necessary. But we're ready to
9 address it as needed.

10 Your Honor, this is a renewed motion. So, you know,
11 we were before Your Honor in December, so you may have some
12 recollection, but I think it may be helpful --

13 THE COURT: Yes.

14 MR. LOCKWOOD: -- to just sketch out the background
15 of what the case in the Commonwealth court is about.

16 So that lawsuit was filed in 2011 by two
17 beneficiaries of the ERS, the Employee Retirement System, and
18 they were suing derivatively on behalf of the retirement
19 system. And the claims against UBS Financial, the party I'm
20 representing here in this motion, concerned underwriting
21 contracts, underwriting agreements between UBS Financial, who
22 served as the lead underwriter on three bond offerings for the
23 ERS in 2008.

24 And the case is almost nine years old, but it's
25 actually not nearly as far along as you would think, because

1 the first five years of litigation really turned on whether
2 those beneficiaries had standing to sue for breach of contract
3 on behalf of the ERS when they weren't parties to the contract
4 and they were acting derivatively.

5 So we won on that in the trial court. It got
6 appealed. On appeal -- and then after five years, the Puerto
7 Rico courts settled that and determined that those retirees
8 did have standing to sue derivatively on behalf of the ERS.
9 And almost no sooner than they had decided that, the issue
10 became moot, because the ERS then directly intervened in the
11 case and took over as the primary plaintiff.

12 They amended their complaint. There was another two
13 years of litigation over those pleadings. And now that gets
14 us to the spring of 2019. And at that point, they amend their
15 complaint for the fifth time. And we were answering the
16 Fourth Amended Complaint, and we decided in response to the
17 Fourth Amended Complaint, we are going to bring a counterclaim
18 based on the same contracts that they were suing us on. The
19 counterclaim arises out of the same contracts that their
20 claims arise out of.

21 And we couldn't do that because of the automatic stay
22 in place from the PROMESA proceedings, so what we did is we,
23 in April, a year ago, started the process to lift the stay and
24 have discussions with the Oversight Board and AAFAF. And
25 those went very slowly. And we tried to be cooperative and

1 proactive, but it finally got to October, and we were getting
2 nowhere, so we filed a motion to lift the stay.

3 And candidly, Your Honor, we didn't think this was a
4 tough ask, because, as we've noted in our briefs, there's
5 many, many cases that say that if you're pursuing a case, you
6 have to allow a counterclaim arising out of the same facts,
7 you are essentially a defensive counterclaim, and to move
8 forward at the same time. But they opposed it.

9 And then we had further discussions. And when we got
10 to Your Honor in December, what was happening then is there
11 was negotiations going on about whether the entire case was
12 going to be saved or not. All right. Because that would, to
13 our minds, have been a fair result. If you're concerned about
14 this case, shut the entire case down. Don't shut down our
15 piece of it and go forward with your piece.

16 So we agreed to a compromise in December that
17 essentially would allow the parties to continue to negotiate
18 that point, but we get our claim on file so that the arguments
19 they were making that these were untimely, that risk would go
20 away for us. Those negotiations didn't bear fruit. We got to
21 February and the Oversight Board told us at that point they
22 were supporting the ERS going forward with its case in the
23 Commonwealth court. They didn't want to stay the entire case.

24 So we said, then you've got to lift the stay, because
25 if you're going to prosecute your side of the case, we get to

1 | prosecute our side of the case. And they continue to oppose
2 | that request.

3 | And, Your Honor, to put that request in context,
4 | essentially what they're saying is that the Commonwealth Court
5 | can look at their piece of the contract that they like, but is
6 | barred from looking at the other clauses of the contract that
7 | support our position. And the difficulty in the way that
8 | they're parsing it isn't just that the counterclaim is
9 | stopped. But as an example, Your Honor, the same allegations
10 | and theory support our ninth affirmative defense in the case,
11 | which is that you have breeched the contract and, therefore,
12 | that excuses our obligations to comply and to provide
13 | performance under the contract and, therefore, you have no
14 | damages.

15 | Then the counterclaim takes that further and says,
16 | you don't just have no damages, we have a right to receive
17 | damages from you. But that is -- in essence, the issue here
18 | is how could one piece of the case go forward and not the
19 | whole case.

20 | Now, Your Honor, we have cited many cases that
21 | support lifting the stay to pursue a counterclaim in this
22 | context. I'm just going to quote one of those cases for Your
23 | Honor, which is the *In Re: Overmyer* case from the Southern
24 | District of New York Bankruptcy Court from 1983. And I just
25 | note, this is not new law. It's well-settled law. There's a

1 long line of continuous cases for decades.

2 In *Overmyer*, the Court said, where a debtor seeks
3 affirmative relief as a plaintiff in a lawsuit, and then
4 invokes the protection of the automatic stay on a
5 counterclaim, the situation warrants very careful scrutiny.
6 In such instance, a Court must be cautious to avoid a decision
7 which would convert Code Section 362 from a shield into a
8 weapon. A debtor should not be permitted to reap the benefits
9 of litigation in one court, but circumvent the burdens in
10 another forum.

11 And the concern we have here is that the Oversight
12 Board and the ERS have, working together, sharpened the Lift
13 Stay into a weapon and are using it against us. And it
14 creates a very unfair situation. And essentially, their only
15 defense to that is, well, our motion is premature, and Your
16 Honor should wait until the Commonwealth Court rules on their
17 Motion to Strike.

18 We filed our claim. They moved to strike it. The
19 Court -- I'm feeling the Court is going to rule on that,
20 because of the situation that we are all in right now. But I
21 do want to note one thing on that. Their papers suggest that
22 we timed this motion somehow unfairly to take advantage of the
23 COVID-19 crisis. And I would note, Your Honor, that we did
24 not ask for the stay to be lifted in April of 2020. We asked
25 for the stay to be lifted in April of 2019, and it's been

1 continuously now -- for a year, sought to have the stay
2 lifted. And their use of the stay to block us and to thwart
3 us has prejudiced us. We've lost a year being able to pursue
4 that claim.

5 Now, as it turns out, Your Honor, there have been no
6 depositions taken in the case in the Commonwealth court. The
7 Court directed the parties to work out a schedule for
8 depositions in February. Events have subsumed that. And I'm
9 not sure when the depositions will start, but we are all
10 hopeful that it will be soon.

11 And think about what's going to happen when those
12 depositions start. If the stay is in place, counsel for the
13 ERS in that case, Mr. Vicente, he's going to complain question
14 by question as to whether a particular question about the
15 contract at issue goes to the counterclaim or goes to the
16 affirmative case, is it part of the case that's stayed or not.
17 And we risk violating the automatic stay as we pursue ordinary
18 discovery in that case, and would have to come back to Your
19 Honor to referee that very gray line as to where -- what piece
20 of the case is stayed and what piece of the case is not
21 stayed.

22 Your Honor, to proceed in this fashion is completely
23 inconsistent with due process. It's designed to create an
24 unfair result. It's basically tying our hands up while
25 allowing them to pursue their case. And they can't cite any

1 authority in which a Court has stayed claims pertaining to
2 certain clauses of the contract and allowed the prosecution of
3 claims with respect to other provisions of a contract. It's
4 an extraordinarily unfair way to proceed.

5 I'd also note, Your Honor, that the suggestion that
6 we had brought this claim to affect or influence Judge De Leon
7 in her decision on our counterclaim, it is contrary to the
8 party's position. Our position in this Court is to let the
9 Commonwealth Court decide that case. In the discretion of the
10 Commonwealth Court -- hello. Discovery in that case, whatever
11 the counterclaims are in and out of that case, whatever the
12 scope of that case is, those issues should be presented to the
13 Commonwealth Court.

14 Now, the objectors here have said, well, the issue of
15 the validity of the bonds is not part of that case, and they
16 have quoted for Your Honor from a hearing in that case. That
17 was a discovery conference. The initial discovery conference
18 in the case. Why had the issue of contracts -- the issue had
19 not been presented to the Judge. And she did make an offhand
20 remark saying that, that issue isn't before me. We hadn't
21 briefed that issue or presented it to her in any way.

22 But ultimately, the question of the scope of that
23 case should be for the judge in that case. The question of
24 the issues in that case, the timing of that case, whether the
25 counterclaim's in or out of the case, whether there's a

1 summary judgment motion that gets heard and when and how
2 should be before that Court.

3 And, Your Honor, I ask you to keep in mind, as the
4 objectors present their reasons for the stay, to consider
5 whether each of those reasons should actually be presented to
6 Judge De Leon and not to Your Honor, because ultimately here
7 the decision was made by the Oversight Board and the Special
8 Claims counsel to keep that case going, to move forward in the
9 Commonwealth court. And they have to accept both the benefits
10 and the burdens of that, and they can't have their case go
11 forward and our case stayed.

12 As I said, Your Honor, I wouldn't even know how you
13 could draw those lines given the interrelation of the claims
14 and the fact that all we're asking is that the Court in that
15 case be able to hear the entire transaction, the entire story,
16 the entire contract, when considering the other contract in
17 that case.

18 THE COURT: Mr. Lockwood, let me ask you this. As I
19 understood it from the papers, and I think this is consistent
20 with the presentation that you've made here, there is a motion
21 pending now by ERS to strike your counterclaims. Have you
22 filed an opposition to that motion?

23 MR. LOCKWOOD: Yes, Your Honor. That then -- that we
24 are awaiting decision on that motion from the Commonwealth
25 Court.

1 THE COURT: Okay. And is there anything by way of
2 asserting opposition to that motion that you believe you are
3 precluded from doing by the Stay Order that is in place from
4 this Court at this point?

5 MR. LOCKWOOD: Your Honor, I actually think the
6 entire motion is inconsistent with the Stay Order, because the
7 Stay Order provided for the presentation of our claim, and
8 then for the stay to go back in place. We haven't pushed that
9 point because our view is the whole case should go forward.

10 And, Your Honor, to --

11 THE COURT: So the Stay Order -- Mr. Lockwood, I must
12 interrupt you.

13 So the Stay Order speaks in terms of reimposing or
14 the continuation as a matter of law of the automatic stay.
15 The statutory automatic stay doesn't preclude the debtor from
16 doing things, does it?

17 MR. LOCKWOOD: Your Honor, well, it's not just the
18 debtor who has opposed the motion. It's also the individual
19 plaintiffs in that case. But in any event --

20 THE COURT: Are they asserting claims against the
21 debtor?

22 Again, I'm sorry. When we have a collision, I always
23 win in this forum.

24 So those individual plaintiffs are not, by seeking to
25 strike the counterclaims, asserting claims against the debtor

1 or the debtor's property, are they?

2 MR. LOCKWOOD: They are not, Your Honor. But my
3 understanding of the Order, and just looking at it here, was
4 that further prosecution of the case would be stayed after the
5 presentation. But in any event, Your Honor, if I'm wrong
6 about that, it doesn't matter from my perspective, because
7 we're not looking to shut the case down.

8 And what we're doing is -- this incremental approach
9 to the stay, which they cite no authority for, creates a lot
10 of problems for us, just practical problems. So the first
11 problem was why the stay was in place, all right? As I said,
12 depositions are going to go forward. When the Court rules on
13 our motion, we won't know. Sometimes motions in the courts in
14 Puerto Rico take months and months and months.

15 Now, if we're taking depositions while the stay is
16 hanging over us, we don't have priority as to the questions --
17 even if we lose the motion, the motion is struck, then we
18 would appeal. Our right to appeal has got to come back to
19 this Court in order to pursue that. And if the stay is lifted
20 just for the appeal, then we still have the overhang, or the
21 discovery of what's stayed and what's not stayed. That never
22 goes away. So --

23 THE COURT: So that is -- Mr. Lockwood, that is what
24 was going to be my next question, which is about the state of
25 discovery. So I gather that right now, under the emergency

1 orders, the court's operations, the Commonwealth court's
2 operations are shut down or suspended. And you've mentioned
3 at the beginning of your remarks that the Commonwealth Court
4 had instructed the parties to negotiate a discovery schedule.

5 Is it your representation and understanding that
6 discovery is allowed by the Commonwealth court to go forward
7 even when it is shut down and notwithstanding the pendency of
8 the Motion to Strike?

9 MR. LOCKWOOD: Well, let me break that into two
10 parts, Your Honor.

11 THE COURT: Yes.

12 MR. LOCKWOOD: Because the first part deals with the
13 emerging crisis, and Mr. Quinones can correct me if I'm wrong
14 on this, but I think, as a practical matter, we're all
15 assuming that the depositions aren't going to be able to start
16 in the next couple of weeks, that we're going to have to sort
17 through matters. So we're from -- our view is we want to get
18 a running start as soon as we're able to get started, but
19 we're not talking about taking depositions in April. That's
20 just not feasible.

21 In terms of the latter piece of your question,
22 there's no need for the depositions to wait until the Court
23 rules on the counterclaim. The ruling on the counterclaim, as
24 I said, could take months. Like I also said, I don't think
25 there's -- the counterclaims really change the scope of the

1 case, because it's part of our defense. And it's not just an
2 affirmative defense, but it's part of the overall story of the
3 transaction and the agreement.

4 And we're not going to be restrained, in our view, to
5 talk about particular clauses of the contract and not talk
6 about other clauses in the contract. Contracts are
7 interpreted as a whole, and we would want to explore all of
8 these issues with respect to the matter. And that's where the
9 stay is constantly a barrier.

10 And we've been at this for a year, and I don't
11 understand what ERS gains from keeping the same place, other
12 than to unfairly prejudice our presentation of the case,
13 because otherwise, kicking the can down the road doesn't serve
14 their interest either, unless their interests are to tie us
15 up.

16 And the last thing I'd say, Your Honor, is from what
17 I heard this morning, there's going to be plenty of things for
18 this Court to address in the future. This issue has been
19 briefed. It's been briefed twice. We don't want to brief it
20 a third time. We think it's ripe and ready for a decision.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 And now Mr. Vicente for the Retiree plaintiffs.

24 MR. VICENTE: Yes. Good morning, Your Honor. This
25 is Harold Vicente.

1 THE COURT: Good morning.

2 MR. VICENTE: I'm glad to hear that you are here.

3 First things first, Your Honor, I would like to join
4 my -- the colleagues that spoke before I did this morning in
5 wishing you and your staff and everyone involved in this
6 litigation and their loved ones, a safe and healthy, you know,
7 condition and keeping away from this terrible thing that is
8 attacking us.

9 And I also would like to express my sincere
10 appreciation on behalf of myself and everyone here living in
11 Puerto Rico for all the efforts that you and your staff are
12 doing for the benefit of this island that is going through --
13 has gone through so much turmoil in the last two or three
14 years, including this most recent one, which has really
15 knocked us out.

16 Having said all of that, Your Honor, let me address
17 several things. First of all, Mr. Lockwood is wrong in his
18 presentation with respect to the nature and extent of the
19 litigation before the Commonwealth Court. This is not a
20 derivative suit by any means. That has been determined both
21 by the Court of Appeals and the Supreme Court affirmed the
22 Court of Appeals in the sense that it denied a cert petition,
23 which declared that indeed the retirees, which I represent,
24 have standing, personal standing to pursue this claim.

25 In addition to that, the law that creates the

1 Retirement System of Puerto Rico expressly states -- was
2 amended to expressly state that the retirees have standing to
3 file suit directly against the tortfeasors that caused the
4 damages to the retirement system as a result of the issuance
5 of the bonds of 2008. So this is not a case of a derivative
6 case at all.

7 In addition to that, Mr. Lockwood is totally wrong
8 when he asserts to this Court, as he has today and in his
9 filings, that this case involves a claim under the
10 underwriting contract. That is not correct. Mr. Lockwood
11 knows that, and we have briefed that abundantly in the past.
12 This is essentially a malpractice case, a tort action based on
13 the Security -- Uniform Securities Act of Puerto Rico, which
14 clearly provides that underwritings, and anyone acting as an
15 underwriter or an advisor in the securities field, has a
16 fiduciary duty, the highest -- bound to act within the highest
17 degree of fiduciary duty towards its customers and clients.

18 This case has nothing to do with the actual issuance
19 of the bonds or the validity of the bonds. This has to do
20 with the advice that in breaching, the bending of FTSE's
21 obligation that UBS has with respect to the retirement system,
22 and prior, and I underscore prior to the issuance of the
23 bonds, they induced the retirement system to enter into an
24 issuance of the bonds in 2008 that several entities have
25 declared to have been a total error and should not -- never

1 have been recommended to the retirement system to go into this
2 grossly negligent effort in generating these bonds.

3 So the contracts came later. And UBS' attempt to
4 induce both this Court and the local court into error should
5 not be tolerated. We have stated, you know, in no uncertain
6 terms that the underwriting has nothing to do with it. And
7 the Court knows this quite well, the trial Court.

8 Now, let me say the following, Your Honor. Why are
9 we here again before you? You will recall that in December,
10 the December Omnibus Hearing, UBS requested a partial lift of
11 the stay in order to file this counterclaim. And you
12 correctly, and very wisely, advised UBS that the PROMESA Court
13 did not have, and would not in any -- under any circumstance
14 interfere with the authority of the Commonwealth Court to
15 allow or not allow the filing of the counterclaim.

16 I distinctly recall that we had this analysis that
17 you analyzed, and you corrected me by saying I'm only going to
18 allow the presentation, quote, unquote, of the Complaint.
19 Whether it is going to be accepted and filed is a
20 determination solely within the discretion of the Commonwealth
21 Court. Well, that happened. UBS went and filed, for example,
22 its counterclaim to the trial Court. We opposed. And then
23 this terrible lockdown occurred.

24 The Court has not ruled whether it is going to accept
25 the filing of the counterclaim. And this is important,

1 | because if the Court denies the filing of the counterclaim,
2 | all of this argument having to do with the validity and
3 | interpretation of the underwriting contract is going to be
4 | outside the scope of the issues before the Court.

5 | And so again, why are we here? Why is UBS coming
6 | back to you in the midst of this pandemic, and in the midst of
7 | this lockdown, knowing full well that the Court has not
8 | decided whether it's going to allow UBS to litigate its
9 | counterclaims in the local court?

10 | Well, the reason for that is, in my humble opinion,
11 | is that UBS, when it has faced the very strong and powerful
12 | opposition that the -- my clients filed with respect to the
13 | allowance of the counterclaim to go forward, and the fact that
14 | the Court, in a hearing that was held in November of last
15 | year, when UBS indicated that it was intending to file a
16 | counterclaim with respect to these issues, the Court
17 | unequivocally, and in no uncertain terms, told UBS that those
18 | issues were not before her. And that is part of the record,
19 | and I put those transcripts into my opposition.

20 | When the -- now, UBS, realizing that the Court has
21 | advanced that it is -- they're highly unlikely -- I'm sorry --
22 | that it will allow this --

23 | THE COURT: That is the two minute warning.

24 | MR. VICENTE: Yeah. I'm sorry.

25 | Now, UBS is coming back before you because they want

1 to get accomplished what they couldn't accomplish during the
2 December hearing, and that was to get the PROMESA Court to
3 enter an order that would tend to influence or tell the Court
4 in the Commonwealth of Puerto Rico to accept the
5 counterclaims.

6 And again, Your Honor, for reasons of comity that you
7 very well identified during our last hearing, you should not
8 send that message. You should not accept UBS' invitation to
9 accept that message and issue an order. I respectfully submit
10 that Your Honor should simply continue to wait and see,
11 because if the trial Court, the Commonwealth Court, denies,
12 denies the filing of the counterclaims, there is no issue that
13 affects the PROMESA litigation.

14 Again, with that, I conclude my remarks and thank you
15 for the opportunity. I hope that everyone is well and keeps
16 protected and away from this horrible disease that is
17 attacking us.

18 Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Vicente, for your remarks,
20 and also for the good wishes for all.

21 And now counsel for the Special Claims Committee.

22 MS. MULLARNEY: Good morning, Your Honor. This is
23 Chelsea Mullarney from Brown Rudnick on behalf of the Special
24 Claims Committee. Can you hear me?

25 THE COURT: Yes. Good morning, Ms. Mullarney.

1 MS. MULLARNEY: Your Honor, just one piece of
2 housekeeping. My motion for pro hac vice admission remains
3 pending, so I just ask the Court's permission to speak on
4 behalf of the Special Claims Committee today.

5 THE COURT: You have my permission. Please
6 proceed.

7 MS. MULLARNEY: Thank you, Your Honor.

8 Also on the line today is my colleague, Sunni
9 Beville. As Your Honor may recall, Sunni presented at the
10 December 2019 Omnibus Hearing on behalf of the Special Claims
11 Committee on the first UBS Motion to Lift the Stay. She's on
12 a line today, and she can also jump in to answer any questions
13 the Court may have.

14 Your Honor, this may --

15 THE COURT: Good morning, Ms. Beville.

16 MS. BEVILLE: Good morning, Your Honor.

17 MS. MULLARNEY: Your Honor, this request by --

18 THE COURT: You can --

19 MS. MULLARNEY: My apologies.

20 THE COURT: Go on, please.

21 MS. MULLARNEY: This request by UBS Financial to
22 lift the stay is a pretty -- it's premature and an attempt to
23 circumvent the jurisdiction of the Commonwealth Court to
24 determine whether the delayed counterclaims filed by UBS
25 Financial are procedurally proper.

1 As Your Honor knows well, this is not UBS Financial's
2 first application for relief from stay. At the December 2019
3 Omnibus Hearing, there was substantial discussion about UBS
4 Financial's initial request, and Your Honor helped the parties
5 draft a joint proposed order permitting UBS Financial to
6 present its proposed counterclaims to the Commonwealth Court.

7 The Lift Stay Order provided, in paragraph two, that,
8 "The Commonwealth Court shall have the sole discretion as to
9 any procedural requirements for presenting the counterclaim
10 and as to any litigation of the counterclaims in that court."

11 The Special Claims Committee and counsel for ERS and
12 the beneficiary plaintiffs in the ERS action understood the
13 on-the-record discussions and the Court's Lift Stay Order to
14 achieve the following. First, to permit UBS Financial to
15 present their counterclaims to the Commonwealth Court. And
16 second, to permit the Commonwealth Court to implement, in its
17 own discretion, the procedural process regarding the
18 presentation of their counterclaims and its own determination
19 as to whether to accept the proposed counterclaims.

20 And as a result of the Lift Stay Order, UBS Financial
21 presented its counterclaims to the Court on February 4th of
22 2020, and the plaintiffs in the ERS action filed a motion to
23 disallow the counterclaims in early March, which, as Your
24 Honor has heard, that motion to disallow has not yet been
25 decided by the Commonwealth Court.

1 Your Honor hit on this point in some of your
2 questions to counsel, Mr. Lockwood, but if we're here today
3 because UBS Financial is concerned that filing an opposition
4 to the pending Motion to Disallow in the ERS action would
5 violate the automatic stay, or that the Lift Stay Order was
6 drafted too narrowly to let that procedural process in the
7 Commonwealth court play out, then we think we can address
8 that, Your Honor.

9 The Special Claims Committee and ERS are prepared to
10 stipulate or submit an agreed upon proposed order, that the
11 intent of the parties is that the Lift Stay Order permit the
12 procedural process regarding the presentation of the proposed
13 counterclaim to play out in the Commonwealth court, but only
14 to permit a decision or any appeal of a decision regarding the
15 procedural propriety of those counterclaims, not to permit any
16 discovery or adjudication of the merits.

17 If, however, as we understand it, UBS is looking for
18 complete relief from stay, regardless of any future ruling of
19 the Commonwealth Court, that is an improper attempt to
20 circumvent the jurisdiction of the Commonwealth Court to
21 decide whether to accept the proposed counterclaims, and to
22 allow UBS to serve discovery and move forward on the merits of
23 its proposed counterclaims without waiting for direction from
24 the Commonwealth Court.

25 In short, UBS is looking for an end run around the

1 | procedural process in the Commonwealth court regarding the
2 | presentation of the proposed counterclaims, a process which
3 | this Court already deferred to during the December Omnibus
4 | Hearing. UBS Financial has provided no explanation for why it
5 | needs such drastic relief during a nearly complete shutdown of
6 | the Commonwealth court due to coronavirus, and cannot wait for
7 | direction from the Commonwealth Court.

8 | It's certainly correct that the parties anticipated
9 | that UBS Financial might make a second application for relief
10 | from stay. However, it was fully our view at the time of the
11 | December Omnibus Hearing that such application would occur
12 | after the Commonwealth Court ruled on the procedural propriety
13 | of the proposed counterclaims. Yet, UBS has created this
14 | piecemeal litigation now before this Court by prematurely
15 | bringing this second Lift Stay Motion.

16 | In our view, it's not as simple as asking whether --
17 | the Commonwealth Court to decide either that the counterclaims
18 | are proper or are not proper. Instead, the Commonwealth Court
19 | will decide whether to permit any or all of the counterclaims
20 | and what issues will be before the Commonwealth Court, if the
21 | counterclaims are able to proceed. As a result, we can't
22 | adequately examine the harm or prejudice to the debtor's
23 | estate until we understand what, if anything, UBS Financial
24 | will be permitted to prosecute in the Commonwealth Court.

25 | UBS tries to --

1 THE COURT: Let me ask you --

2 MS. MULLARNEY: Yes.

3 THE COURT: Ms. Mullarney, I have a question for you.
4 I hear you loud and clear on the proposition that UBS
5 Financial shouldn't be able to take discovery in aid of claims
6 that have not yet been ruled inside the case. Do you have any
7 issue with the proposition that UBS Financial is not
8 constrained from defending against the claims that have been
9 asserted against it? So that if UBS could state in good faith
10 a position that certain questions at a deposition or certain
11 discovery is simply a matter of being able to defend itself
12 against ERS' claims, is there any argument that that would be
13 a violation of the automatic stay?

14 MS. MULLARNEY: Your Honor, in our view, to answer
15 your question, we don't take issue with the proposition that
16 UBS is able to defend itself in the ERS action pending before
17 the Commonwealth Court. And if there are disputes during the
18 course of discovery or other depositions about what is proper
19 within the scope of discovery in the ERS action as it
20 currently exists, those disputes would be brought to the
21 Commonwealth Court about what the scope of the issues are that
22 are within the ERS options currently.

23 THE COURT: Thank you. You may continue with your
24 argument.

25 MS. MULLARNEY: Thank you, Your Honor.

1 UBS tries to muddy the waters by suggesting that
2 waiting for the Commonwealth Court to decide the motion to
3 disallow counterclaims would require this Court to oversee
4 discovery disputes in the ERS action. As I just explained,
5 that is not the case.

6 What we understood the on-the-record discussion in
7 the Lift Stay Order to provide is that the Commonwealth Court
8 is permitted to exhaust its procedural process regarding the
9 submission of the proposed counterclaims. There is no
10 discovery involved in that procedural process, and UBS does
11 not claim it would be entitled to any discovery during that
12 motion process.

13 Once that procedural process is exhausted and a final
14 decision is rendered regarding whether the Commonwealth Court
15 will accept the counterclaim, then the parties can adequately
16 assess what, if any, claims will proceed in the ERS action,
17 and what, if any, impact the prosecution of such claims will
18 have on the bankruptcy case.

19 In our papers, we go through the factors from *Sonnax*
20 *Industries* that UBS relies on in its Second Motion to Lift
21 Stay. And unless Your Honor has any questions about the
22 Special Claims Committee's analysis, we'll rely on the
23 analysis we put forth in our papers.

24 THE COURT: I have no questions about that.

25 MS. MULLARNEY: Thank you, Your Honor.

1 Your Honor, just to conclude, we're in nearly the
2 same place that we were in in December, except now UBS
3 Financial has presented its proposed counterclaims to the
4 Commonwealth Court for consideration. UBS Financial has not
5 provided an explanation for why it refuses to wait for the
6 Commonwealth Court to determine whether to accept the proposed
7 counterclaims before UBS Financial seeks relief from the
8 automatic stay.

9 At this stage, and under these circumstances, it is
10 premature for UBS Financial to seek relief from stay. Thank
11 you, Your Honor.

12 THE COURT: Thank you.

13 And now we'll return to Mr. Lockwood.

14 MR. LOCKWOOD: Thank you, Your Honor.

15 Your Honor, the fundamental premise of the compromise
16 that was reached in December is just false, that we agreed
17 that we would not pursue a lifting of the stay until the
18 Commonwealth Court ruled on a -- on whether that claim was
19 properly presented to that court or not.

20 The reason why we accepted a partial resolution --
21 and Your Honor didn't adjudicate this issue. This was
22 something we had, you know, agreed to with the Oversight Board
23 going into the hearing. The reason why we did that is because
24 they said they needed some more time to negotiate and to
25 analyze and figure out what their position was going to be as

1 to whether they were going to seek a stay in the entire case
2 or whether they were going to allow the case to go forward.
3 Because we never would have accepted the incremental approach
4 that we did in that hearing.

5 The reason why we wanted just the right to file and
6 then for the stay to go back in place is due to there was an
7 argument being made by Mr. Vicente that our claims were
8 untimely. So we needed to protect ourselves to get them on
9 file as soon as possible while the parties continued to
10 negotiate as to whether there would be a stay in the entire
11 case or whether the case would go forward.

12 So the premise that that Order contemplates that a
13 ruling will result from the Court before the stay is lifted is
14 just incorrect. That wasn't the reason why the stay was put
15 in place. I mean, the reason why that Order was put in place
16 was just to maintain a status quo through negotiations. The
17 negotiations ended in February. The ERS made its choice, it's
18 going to continue to prosecute the case.

19 We have case after case after case which say what the
20 consequences of that are, which is we get to prosecute our
21 side of the case. The suggestion that we are trying to end
22 run the procedures in the Commonwealth court, we're trying to
23 influence the Commonwealth, they're the ones who insist on
24 entangling this Court up with the Commonwealth Court. We want
25 this to be unshackled, and for the Commonwealth Court to have

1 the complete power to do as it wishes with respect to these
2 claims.

3 We are not asking Your Honor to weigh in on the
4 motion. We think Your Honor can put appropriate language in
5 any order lifting stay making it clear that the decisions are
6 for the Commonwealth Court. The decisions with respect to
7 discovery, the timing of discovery, when we can take that
8 discovery, all of those issues are for Judge De Leon and not
9 for the Federal Court.

10 And again, there is no explanation as to what the
11 harm to the debtor is from lifting the stay. The suggestion
12 that they can't see that far ahead into the future, they can't
13 imagine what our claim will be, well, that's clear. They have
14 the claim.

15 They can explain to Your Honor what the problems are.
16 They just don't have an answer. They can't answer the
17 question, so they're punting. They're punting and punting.
18 And the problem is we're now a year pushed down the line from
19 them. A year. And we think that's really unfair.

20 At this point, you know, justice delayed is justice
21 denied. And we're being prejudiced every minute, because
22 really, we need to be ready to go when the Court opens back
23 up, and it will in a month or two or more before we get back
24 to Your Honor and get a Lift Stay Order.

25 What is the reason to put us two months behind their

1 case? There isn't. And this issue is ripe, and we ask you
2 for a decision.

3 Thank you, Your Honor.

4 THE COURT: Thank you.

5 I read the submissions very carefully. I've listened
6 very carefully today. Under the Order that was put in place,
7 UBS Financial was permitted to present its counterclaims to
8 the Commonwealth Court for the Commonwealth Court's exercise
9 of its discretion in making a decision as to the treatment,
10 viability, and litigation of the counterclaims.

11 The counterclaims have been challenged. UBS
12 Financial has responded to that challenge. But a decision
13 hasn't been made yet, and so it does not seem to me that even
14 UBS Financial contends that the counterclaims are an active
15 part of that Commonwealth court litigation at this point. And
16 so it is premature for this Court to issue an order that gives
17 UBS Financial wide-open permission, to engage in litigation of
18 counterclaims that are not yet in the Commonwealth case.

19 To the extent that there is any lack of clarity about
20 the effect of the current Order, it does not preclude UBS
21 Financial from opposing the Motion to Strike UBS'
22 counterclaims, or from appealing any such order striking the
23 counterclaims if an appeal is permitted under Commonwealth law
24 and procedures, nor does it hinder UBS Financial from
25 defending the claims that are being prosecuted against UBS

1 Financial in the Commonwealth litigation.

2 If there is any dispute as to whether discovery that
3 UBS wishes to pursue is within the scope of the litigation
4 that is being prosecuted against it in the Commonwealth court,
5 those issues should be presented to the Commonwealth Court.
6 And the Order that was issued in December is not an impediment
7 to that sort of litigation in the Commonwealth court.

8 Accordingly, the UBS Lift Stay Motion is denied in
9 all other respects, without prejudice to renewal if UBS
10 Financial's counterclaims survive the pending motion practice
11 in the Commonwealth court. And the Court will enter a short
12 order memorializing this oral ruling. Thank you.

13 The final item on the Agenda today is the preliminary
14 hearing on the Lift Stay Motion of Mr. Santana Baez, which is
15 docket entry No. 12516 in case No. 17-3283. And let's see,
16 AAFAF intends to speak to the motion.

17 Is Mr. Marini Biaggi here?

18 MR. MARINI BIAGGI: Yes. Good morning, Your Honor.

19 THE COURT: Thank you.

20 Before you begin speaking, I will ask, is there
21 anyone on the phone line who intends to speak for Mr. Santana
22 Baez?

23 (No response.)

24 THE COURT: Mr. Santana Baez is proceeding pro se,
25 and it's my understanding that he is in custody. And so it

1 | doesn't surprise me that there's no one to speak, but I wanted
2 | to make sure of that before we proceeded.

3 | So at this point, I will ask Mr. Marini Biaggi to
4 | speak for AAFAF.

5 | MR. MARINI BIAGGI: Good morning, Your Honor. Luis
6 | Marini Biaggi of Marini Pietrantoni Muniz for AAFAF.

7 | Can you hear me, Your Honor?

8 | THE COURT: Yes. Yes. Good morning.

9 | MR. MARINI BIAGGI: Perfect. Good morning. Your
10 | Honor, thank you for allowing us to present the presentation.
11 | I will try to be brief and hopefully keep it below the
12 | scheduled time.

13 | In response to the Lift of Stay filed by movant, the
14 | Commonwealth had presented through the Department of Justice
15 | an urgent motion to extend the deadlines to respond to the
16 | motion and to hold this preliminary hearing to set forth a
17 | briefing schedule.

18 | We put forth in the urgent motion the reasons why the
19 | Commonwealth requested an adjournment and extensions, and I
20 | would like to add only three additional points to support the
21 | relief in our urgent motion.

22 | First, one of the bases that the Commonwealth
23 | asserted for the adjournment was due to the emergency order
24 | that was in place at the time of the filing of the motion,
25 | which limited the ability of the DOJ from accessing the

1 physical files of the litigation from which the stay relief is
2 requested. I note that since the DOJ filed the motion, the
3 emergency order has now been extended through May 3rd.

4 Second, Your Honor, I think there's no prejudice to
5 the extension of the deadlines that we requested. The movant
6 filed a tort claim in the local courts. The local courts in
7 Puerto Rico are closed until at least May 3rd, and
8 adjournments are extended beyond that.

9 Third, and finally, Your Honor, one of the arguments
10 that the Commonwealth made in the urgent motion to support a
11 filing to extend the deadlines was based on the allegation
12 that the Commonwealth had a reasonable likelihood of
13 prevailing in its objections. To support that argument, the
14 Commonwealth asserted that this Court had ruled on similar
15 requests to lift the stay made by the same movant, actually,
16 various litigations against the Commonwealth, and that the
17 Court had previously denied such request.

18 And I would only add the fact that this Court has
19 already denied a request by the same movant to lift the stay
20 in the same case, detailing the motion pending before Your
21 Honor. That was in this Court's Memorandum Order under docket
22 7696. I would submit that -- the same reasons that led the
23 Court to deny the motion to lift the stay in this case over a
24 year ago. I would move the Court to deny the stay now when
25 the Commonwealth submits its objection.

1 With that said, Your Honor, the Commonwealth has made
2 progress in light of the existing emergency conditions to
3 compile and obtain the physical files of the underlying
4 litigation and to be in a position to respond. Thus, we
5 request an extension of two weeks, a few days beyond the
6 potential expiration of the existing emergency order, until
7 May 6, 2020, to submit a response.

8 Unless Your Honor has any questions, I don't have
9 anything further, other than what the DOJ put in its motion.

10 THE COURT: All right. So thank you. You've
11 provided additional information here and proposed a time
12 frame. And so am I correct in understanding that it's the
13 DOJ's position that the Commonwealth is a defendant, and a
14 defendant as to which issue has been joined in this particular
15 case that Mr. Santana Baez has cited? I think it's
16 DDT2016-0591?

17 MR. MARINI BIAGGI: Yes, Your Honor. Obviously, one
18 of the reasons for the extension is to be able to examine the
19 physical files and to confirm what is involved. But the DOJ
20 understands that the Commonwealth is a party and that summons
21 was received. I don't know if properly served or not, but the
22 Commonwealth is named in the litigation.

23 THE COURT: And you believe that two weeks extension
24 of time to file your responsive papers will be sufficient, to
25 May 6?

1 MR. MARINI BIAGGI: Yes, Your Honor.

2 THE COURT: All right.

3 Okay. So I will grant the extension to May 6 to
4 respond, and I will provide -- given Mr. Santana Baez'
5 incarceration, I will give him three weeks from that, which
6 would be May 27th, to reply. And I will set a final hearing,
7 if necessary, for the June Omni, which I believe is June 3rd,
8 but we'll get the precise date and we'll put that in an order.

9 And I find that the circumstances of the emergency
10 measures and the inaccessibility of public documents create,
11 along with the apparent likelihood that the Commonwealth will
12 prevail against this Motion to Lift Stay, the necessary
13 compelling circumstances for extension of the time for the
14 final hearing until June 3rd, and for the final resolution of
15 the Lift Stay Motion through June 10th, which will give the
16 Court time after the final hearing to render its decision.

17 And so the automatic stay of the litigation is
18 extended in light of these compelling circumstances through
19 June 10th, with the final hearing set for the June 3rd Omni,
20 if the Court has not resolved the matter on the papers.

21 Are there any questions about that?

22 MR. MARINI BIAGGI: Not from me, Your Honor. Thank
23 you.

24 THE COURT: Very well. And the Court will issue a
25 short written order setting out the schedule and describing

1 today's proceeding, which the Court will mail to Mr. Santana
2 Baez.

3 Does anyone wish to be heard as to any other matter
4 before we conclude this Omni?

5 (No response.)

6 THE COURT: All right. Then our day's Agenda has
7 been concluded. The next scheduled hearing date is the
8 hearing in connection with the revenue bond Lift Stay Motions,
9 which is scheduled for May 13th. I expect that that hearing
10 will occur telephonically as well, but the Court will issue a
11 procedures order providing appropriate logistical details
12 closer to the date of that hearing.

13 As always, I would like to thank the Court staff in
14 Puerto Rico, Boston, and New York for their work in preparing
15 for and in conducting today's hearing, and for their superb
16 ongoing support of the administration of these very complex
17 cases under very challenging circumstances.

18 And I thank everyone who continues to work in these
19 challenging circumstances toward a resolution of these
20 proceedings for Puerto Rico and its instrumentalities. Stay
21 safe and keep well, everyone. We are adjourned.

22 (At 11:37 AM, proceedings concluded.)

23 * * *

24

25

1 U.S. DISTRICT COURT)

2 DISTRICT OF PUERTO RICO)

3

4 I certify that this transcript consisting of 76 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain, and the
8 Honorable United States Magistrate Judge Judith Gail Dein on
9 April 22, 2020.

10

11

12

13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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